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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/028,638	12/19/2001	Richard A. Kollaja	56782US002	2655

32692 7590 08/31/2004

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EXAMINER

ZIRKER, DANIEL R

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 08/31/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

Applicant(s)

Examiner

Group Art Unit

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE -3- MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☒ Responsive to communication(s) filed on 7/8/04
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-20 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-8, 13, 14, 19, 20 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. _____
- ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

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1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Applicants' election with traverse of claims 1-8, 13 and 14, together with newly added claims 19 and 20 in the response filed July 8, 2004 is acknowledged. The traversal is on the ground(s) that it is argued the field of searches are co-extensive. This is not found persuasive because the various claim groupings contain significantly different parameters in many of the claims and as such the Examiner disagrees with the argument that the field of search would be co-extensive; additionally, whether or not the article claims are made by similar processes does not mean that each should be examined with the other.

The requirement is still deemed proper and is therefore made FINAL.

3. Claims 19 and 20 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. More particularly, in claim 19 the phrase "substantially greater shear strength" and in claim 20 the phrase "substantially greater elastic modulus" are each believed to be vague and indefinite since it is believed that no standard is set forth to determine the metes and bounds of these

two limitations, and consequently a prospective infringer would not have suitable notice as to whether or not he might infringe these particular limitations.

4. Claims 1-8, 13, 14, 19 and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over either the translation of DE -452, or WO -857, each taken in view of either Wyeth et al. or Schrenk et al., substantially for the reasons set forth in paragraph No. 12 of Paper No. 040604, together with the following additional observations. Applicants essentially ignore the Examiner's position of record and have instead proceeded to search out many of the various claimed embodiments in a manner that appears to assume almost that some sort of combination anticipation rejection has been set forth; in essence they have ignored the Examiner's position that the various prior art combinations clearly disclose, in certain embodiments, almost any polymeric co-extruded multilayer web made from a variety of continuous and/or discontinuous thermoplastic and other conventional polymers that can include adhesive layers and the like. In essence they have completely ignored the state of the art, while the Examiner again must point out that the relied upon prior art combinations clearly indicate that a particular co-extruded web structure having a desired number of layers, each layer being continuous or discontinuous in a desired direction

and which may further utilize a plurality of distinct phases are each believed to be parameters well within the ordinary skill of the art, in the absence of unexpected results. In addition to what the Examiner has previously set forth about the prior art, note that WO -857 at page 9, lines 1-10 teaches a closely related layered structure where layers can be substantially continuous in a first plane parallel to one of the major surfaces and discontinuous in a second plane transverse to the first plane, to cite one of many various embodiments disclosed. Note also that DE -452 at page 3, next to last paragraph clearly teaches the utilization of styrene based adhesive layers in a wide variety of embodiments, of which it is believed that pressure sensitive adhesives would clearly constitute a member thereof. Additionally, with respect to applicants' position (Response, page 6, last complete paragraph) "that at least one of the continuous layers be a pressure sensitive adhesive is not found in any of the references" is simply an example of what the Examiner has been arguing throughout the prosecution; namely, that in the absence of unexpected results not heretofore shown on the record, this is just a routine design parameter well within the ordinary skill of the art in the highly sophisticated extrusion art. Note also that applicants admit (Response, page 8, next to last paragraph) "that the general concept of

multilayer extruded films is well known in the art". In summary, the Examiner has cited a pair of prior art combinations which broadly teach or render obvious the claimed structures which applicants believe constitute their invention, and applicants have failed to rebut the prima facie case by showing that there is anything non-obvious about the particular chosen arrangement.

Finally, with respect to the interview held by the Examiner and applicants' attorney on July 7th of this year, the Examiner notes that no numeric size dimensions or the like have been added to the claimed genus of articles, as was respectfully suggested at that time, and the limitations set forth in claims 19 and 20 are believed to be too broad in their present condition to rebut the prima facie case of record.

5. **THIS ACTION IS MADE FINAL.** Applicants are reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a). The practice of automatically extending the shortened statutory period an additional month upon the filing of a timely first response to a final rejection has been discontinued by the Office. See 1021 TMOG 35.

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION

IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Zirker whose telephone number is (571) 272-1486. The examiner can normally be reached on Monday-Thursday from 8:30 A.M. to 6:00 P.M. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (571) 272-1478. The fax phone number for this Group is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either private PAIR or public PAIR. Status information for unpublished applications is available through private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on

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access to the private PAIR system, contact the Electronic
Business Center (EBC) at 866-217-9197 (toll-free).

Dzirker:cdc

August 24, 2004

DANIEL ZIRKER
PRIMARY EXAMINER
GROUP ~~1900~~
1700

Daniel Zinker